IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

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WRIT PETITION NO : 8736 of 2004

Between:

Miss. K.Rajya Laxmi D/o K.Rajeswara Rao
Chadalavada Vari Street, Bapatla, Guntur Dist

..... PETITIONER

AND

1 The Sub Registrar, Kothagudem Khammam Dist
2 Md. Abdul Waheed S/o Md. Asgar Ahmed
Kaviraj Nagar, Yellandu Cross Road, Khammam

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus or any other appropriate writ or order or direction declaring the Marriage Certificate bearing No.250879 HM No.1/2004 dated 3/01/2004 issued by the first respondent, the Sub Registrar, Kothagudem, as arbitrary, illegal and as in violation of provisions of Hindu Marriage Act, 1955 and the Rules made thereunder, and issue a consequential direction directing the second respondent not to use the said Certificate in any manner whatsoever, against the Petitioner, and not to claim in any manner whatsoever, that he had married the Petitioner.

Counsel for the Petitioner:KUM.C.SINDHU KUMARI

Counsel for the Respondent No.1: GP FOR REVENUE

Counsel for the Respondent No.2: Mr.Devulapalli Chandra Sekhar

The Court at the stage of admission made the following :

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O R D E R :

The petitioner filed this Writ Petition by invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking Writ of Mandamus declaring the Marriage Certificate bearing No.250879 HM No.1/2004, dated 03-01-2004, between the petitioner and the second respondent issued by the first respondent-Sub-Registrar, Kothagudem, under the provisions of the Hindu Marriage Act, 1955, as arbitrary and illegal, in effect seeks a declaration for annulment of marriage between petitioner and Respondent No.2.

2. It is stated by the petitioner that the marriage can be solemnized between two Hindus, but the second respondent is a Muslim. Thus, the same cannot be registered under the Hindu Marriage Act, 1955.

3. Various other allegations were made in the Writ Petition that the petitioner was kidnapped and her signatures were obtained on blank papers including on Stamp papers forcibly by the second respondent. He seemed to have been misused them. The second respondent had misrepresented as if, she came to Hyderabad and filed a Writ petition No.668 of 2004 along with him.

4. W.P.No.668 of 2002 was disposed of with a direction to the concerned Police that they can take action only on the basis of any complaint. On the basis of the said Order, the second respondent prevented the Police from rescuing the petitioner by her parents. Thereafter, the petitioner issued lawyer's notice dated 06-03-2004 to return all the signed papers which he had obtained from her parents forcibly at the time of rescuing the petitioner from the illegal custody of the second respondent, for which the second respondent sent a reply, inter alia, claiming that he had married the petitioner and enclosed a copy of the Certificate issued by the first respondent

with reply. In view of the above reasons, the present Writ Petition is filed.

5. The first respondent filed a counter stating that the Marriage Certificate bearing No.250879 HM1/2004, dated 03-01-2004, issued by the Incharge Sub-Registrar, Kothagudem, registering the marriage of the petitioner with the second respondent according to the interest of the parties. The petitioner and the second respondent came to the office of the Sub-Registrar, Kothagudem on the same day along with the marriage receipt dated 03-01-2004 issued by the Panduranga Bajan Mandir, Kothagudem. They made a joint application for registration of their marriage, which was solemnized on 03-01-2004 at Kothagudem, and given the particulars of both the petitioner and the second respondent. The said declaration was signed by the petitioner and the second respondent in the presence of three witnesses as required under Law. In the Joint declaration, both the petitioner as well as the second respondent stated their caste and religion as Hindu and Indian in column No.2. They have also enclosed necessary certificates proving the date of birth and to show that they are majors. Accordingly, the application for registration of the marriage was accepted and Certificate as such was issued.

6. The second respondent in his counter affidavit denied about the kidnapping of the petitioner and keeping her in illegal confinement. He further stated that the petitioner volunteered for the said marriage for which he had accepted the Hindu religion and Hindu Marriage Customs and Practices only because he respects Hinduism and converted to Hinduism. The present Writ Petition is filed at the instance of the petitioner's parents. In fact, the petitioner earlier addressed a letter in her own handwriting to the Honourable the Chief Justice of Andhra Pradesh during December, 2002, complaining about the harassment of her parents for marrying the second respondent against their wish and seeking protection. The said letter was forwarded to the Member Secretary, Andhra Pradesh State Legal Services Authority, who in turn, forwarded the same to the Superintendent of Police, Guntur and Khammam Districts, through letter dated 20-12-2003 for taking necessary action. In view of the same, the allegation of the petitioner that the said marriage occurred by playing fraud does not arise.

7. Learned senior counsel for the petitioner contends Section 5 of the Hindu

Marriage Act contemplates solemnizing of marriage between two Hindus, that be the case, the registration of the marriage under Section 8 (10)(v) between a Muslim and Hindu is void, since the Marriage Certificate issued is misused by the second respondent. The petitioner filed the present Writ Petition to declare the said Certificate as void and the same is in violation of provisions of the Hindu Marriage Act, 1955, and therefore, the second respondent is disentitled for using the said Certificate for any other purpose.

8 . The submission made by the learned counsel for the petitioner cannot be accepted for the reason that any declaration made as the marriage certificate is null and void will have the effect of annulling the marriage between the parties, for which, the petitioner has to approach a competent Civil Court for an appropriate declaration including annulling of the marriage. In those proceedings, it is always open for the petitioner to prove the allegation about illegal confinement by the second respondent and such marriage cannot be registered under the Hindu Marriage Act, 1955, and the said marriage was not with the consent of the petitioner. The very fact that petitioner herself addressed a letter to the Honourable the Chief Justice of this Court, whether amounts to consent of the petitioner to the marriage etc., can be decided by a Civil Court. In view of the same, I do not see any ground to entertain the Writ Petition.

9. The Writ Petition is accordingly dismissed with a leave and liberty to the parties to approach a competent Civil Court for an appropriate relief.

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07-09-2004

prv/ka

.....ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Sub Registrar, Kothagudem Khammam District.
2. 2CCs to G.P. for Revenue, High Court Buildings, Hyderabad(OUT).

2. 2CD copies.